# UNITED STATES PATENT AND TRADEMARK OFFICE

| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|---|---|---|---|---|
| 09/740,617 | 12/18/2000 | Victor Kouznetsov | 002.0181.01 | 9890 |

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| 22895 | 7590 | 09/08/2005 | |

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| EXAMINER |
|---|
| SWEARINGEN, JEFFREY R |

| ART UNIT | PAPER NUMBER |
|---|---|
| 2145 | |

DATE MAILED: 09/08/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

PTO-90C (Rev. 10/03)

| Office Action Summary | Application No. | Applicant(s) |
|---|---|---|
| | 09/740,617 | KOUZNETSOV ET AL. |
| | Examiner | Art Unit | |
| | Jeffrey R. Swearingen | 2145 | |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE <u>3</u> MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

1)☒ Responsive to communication(s) filed on <u>10 June 2005</u>.

2a)☐ This action is **FINAL.**    2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

4)☒ Claim(s) *1,2,4-11 and 13-20* is/are pending in the application.

    4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1,2,4-11 and 13-20* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

**Application Papers**

9)☒ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

    Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

    Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

    a)☐ All   b)☐ Some * c)☐ None of:

      1.☐ Certified copies of the priority documents have been received.

      2.☐ Certified copies of the priority documents have been received in Application No. _____.

      3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

    * See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

1)☒ Notice of References Cited (PTO-892)

2)☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)

3)☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
    Paper No(s)/Mail Date _____.

4)☐ Interview Summary (PTO-413)
    Paper No(s)/Mail Date. _____.

5)☐ Notice of Informal Patent Application (PTO-152)

6)☐ Other: _____.

## DETAILED ACTION

1.      This case has been reassigned to a new Examiner.

### Continued Examination Under 37 CFR 1.114

2.      A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 6/10/2005 has been entered.

### Specification

3.      The disclosure is objected to because it contains an embedded hyperlink and/or other form of browser-executable code. Applicant is required to delete the embedded hyperlink and/or other form of browser-executable code. See MPEP § 608.01.

4.      The disclosure is objected to because of the following informalities: All pending applications referred to within the specification should be updated to reflect the current status of said applications.

        Appropriate correction is required.

5.      The use of the trademark McAfee has been noted in this application. It should be capitalized wherever it appears and be accompanied by the generic terminology. -

        Although the use of trademarks is permissible in patent applications, the proprietary nature of the marks should be respected and every effort made to prevent their use in any manner which might adversely affect their validity as trademarks.

### Terminal Disclaimer

6.     The new Examiner of record acknowledges the filing of a terminal disclaimer in the application by Applicant against U.S. Patent No. 6,622,150.

### Claim Rejections - 35 USC § 112

7.     The following is a quotation of the second paragraph of 35 U.S.C. 112:

> The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

8.     Claims 4-5 and 13-14 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

9.     Claims 4 and 5 are dependent upon cancelled claim 3, and there is insufficient antecedent basis present for these limitations.  In the interest of compact prosecution, claim 4 is treated as being dependent upon claim 1.  Likewise, claims 13 and 14 are dependent upon cancelled claim 12, and are being treated as dependent upon claim 10 for purposes of compact prosecution.

### Claim Rejections - 35 USC § 103

10.     The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

11.     Claims 1-2, 4-11, and 13-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Nachenberg (U.S. Patent No. 6,357,008) in view of Serbinis et al. (U.S. Patent No. 6,314,425).

12.      In regard to claim 1, Nachenberg discloses *a structured virus database storing one or more virus definition records* (column 1, lines 27-33, lines 42-45; this is in the background of the Nachenberg patent as being well known prior art); *an identifier uniquely identifying a computer virus* (column 1, lines 27-33); *at least one virus name associated with the computer virus* (column 2, lines 43-45); *a virus definition sentence comprising object code providing operations to detect the identified computer virus within a computer system* (column 1, lines 39-41, "signature scanning"); *a virus removal sentence comprising object code providing operations to clean the identified computer virus from the computer system* (column 1, lines 39-41; Particular virus strains can be identified <u>for removal</u>.); *and a server database engine comparing subsequently modified versions of the structured virus database to form a delta set of virus definition records* (column 7, lines 25-27), *wherein the client database engine stores the delta virus definition records set into the structured virus database* (column 1, lines 27-33).

13.      Nachenberg teaches use of a database. See Nachenberg, column 1, lines 40-45. Nachenberg fails to explicitly disclose the use of a client database engine to store records into a database indexed by identifiers and names. Nachenburg likewise does not teach converting records stored in a database into a data file. However, Serbinis teaches the implementation of a relational database (column 6, lines 27-53) which would allow for indexing by identifiers (inherent to a relational database, also taught in Serbinis, column 8, lines 12-62) and conversion of records into another file format (column 10, lines 15-61). Therefore, because Nachenberg teaches use of a database and Serbinis teaches commonly known techniques in database operation such as record conversion and indexing of records by various means, it would have been obvious to one of ordinary skill in the art to combine the Nachenberg invention with the teachings of Serbinis in order to allow easier access to records in a virus database.

14.      In regard to claim 2, Nachenberg in view of Serbinis is applied as in claim 1. Nachenberg further discloses *a client anti-virus language decompiler converting each virus definition set in the virus data file into a virus definition record.* Column 2, lines 18-25 of Nachenberg teaches the detection of new and unknown viruses. Column 1, lines 39-45 of Nachenberg teaches the use of virus definitions in a signature

database. In order for the virus definitions to enter the virus database, the limitations taught in claim 2 are inherent to the Nachenberg invention.

15.    In regard to claim 4, Nachenberg in view of Serbinis is applied as in claim 1. Nachenberg further discloses *a server database engine building the virus definition records into the structured virus database by generating the identifier for each virus definition record and populating each virus definition record with the virus definition sentence and the virus removal sentence for the computer virus.* This is part of the virus signature database system inherently taught in column 1, lines 39-45.

16.    In regard to claim 5, Nachenberg in view of Serbinis is applied as in claim 4. Nachenberg further discloses *a server anti-virus language decompiler converting each virus definition set in the virus data file into a virus definition record.* See rejection of claim 2.

17.    In regard to claim 6, Nachenberg in view of Serbinis is applied as in claim 1. Nachenberg further discloses *the database engine accessing the virus definition records in the structured virus database to perform at least one of adding, removing, and replacing a virus definition record.* Nachenberg teaches updating a virus signature database in column 1, lines 44-45.

18.    In regard to claim 7, Nachenberg in view of Serbinis is applied as in claim 1. Serbinis further teaches compression and decompression of a file that is transferred. See Serbinis, column 11, line 66 – column 12, line 7 and column 13, lines 46-49.

19.    In regard to claim 8, Nachenberg in view of Serbinis is applied as in claim 1. Serbinis further teaches encryption and decryption of a file that is transferred. See Serbinis, column 11, line 66 – column 12, line 7 and column 13, lines 46-49.

20.    In regard to claim 9, Nachenberg in view of Serbinis is applied as in claim 1. The motivation to combine Nachenberg with Serbinis was the additional limitations of the Serbinis relational database as explained in the rejection of claim 1.

21.    Claim 10 meets the same limitations as claim 1, and the rejection of claim 1 is applied against claim 10.

22.    Claim 11 meets the same limitations as claim 2, and the rejection of claim 2 is applied against claim 11.

23.     Claim 13 meets the same limitations as claim 4, and the rejection of claim 4 is applied against claim 13.

24.     Claim 14 meets the same limitations as claim 5, and the rejection of claim 5 is applied against claim 14.

25.     Claim 15 meets the same limitations as claim 6, and the rejection of claim 6 is applied against claim 15.

26.     Claim 16 meets the same limitations as claim 7, and the rejection of claim 7 is applied against claim 16.

27.     Claim 17 meets the same limitations as claim 8, and the rejection of claim 8 is applied against claim 17.

28.     Claim 18 meets the same limitations as claim 9, and the rejection of claim 9 is applied against claim 18.

29.     Claim 19 meets the same limitations as claim 10, and the rejection of claim 10 is applied against claim 19.

30.     Claim 20 meets the same limitations of claim 1, and the rejection of claim 1 is applied against claim 20.

## Response to Arguments

31.     Applicant's arguments filed 6/10/2005 have been fully considered but they are not persuasive.

32.     In response to applicant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art.  See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988)and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992).  In this case, see the motivation for combination presented in paragraph 10 of this office action.

33.     Applicant has argued that the combination of Nachenberg and Serbinis does not mention the use

of object code. The Examiner maintains the rejection. Object code is an inherent part of the Nachenberg

invention. See the references to machine code in columns 2 and 3 of Nachenberg. See further the

references to machine code in columns 10 and 11 of Nachenberg. Also, Applicant is directed to

Applicant's own admitted prior art on page 2 of the disclosure, lines 14-16, which states that anti-virus

companies store anti-virus language code as compiled object code.

34.     Applicant has not addressed in the remarks of June 10, 2005, how the additional claim language

moved into independent claims 1 and 10 from canceled dependent claims 3 and 12 distinguishes the

claims over the prior art.


### Conclusion

35.     The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.
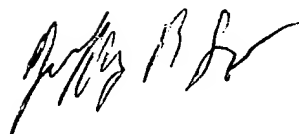
| | |
|---|---|
| Ruff et al. | U.S. Patent No. 6,802,028 |
| Nachenberg | U.S. Patent No. 6,851,057 |
| Nachenberg | U.S. Patent No. 6,021,510 |
| Wells | U.S. Patent No. 6,338,141 |
| Nachenberg | U.S. Patent No. 6,067,410 |
| Dotan | U.S. Patent No. 6,073,239 |
| Cowlard | U.S. Patent No. 5,802,277 |
| Lettvin | U.S. Patent No. 5,559,960 |

Any inquiry concerning this communication or earlier communications from the examiner should

be directed to Jeffrey R. Swearingen whose telephone number is (571) 272-3921. The examiner can

normally be reached on M-F 8:30-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor,

Rupal Dharia can be reached on 571-272-3880. The fax phone number for the organization where this

application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application

Information Retrieval (PAIR) system. Status information for published applications may be obtained from

either Private PAIR or Public PAIR. Status information for unpublished applications is available through

Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should

you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC)

at 866-217-9197 (toll-free).

RUPAL DHARIA
SUPERVISORY PATENT EXAMINER